

HOUSE No. 4128

The Commonwealth of Massachusetts



MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

EXECUTIVE DEPARTMENT
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June 1, 2005.

To the Honorable Senate and House of Representatives:

Today I am filing “An Act Reforming the Commonwealth’s Automobile Insurance System and Providing Rate Relief.”

Over the last fifteen years the Commonwealth’s private passenger automobile insurance marketplace has degenerated into a Byzantine system that severely limits insurance options for our best drivers and unfairly subsidizes our worst drivers. This system has driven all but nineteen insurance carriers out of Massachusetts. Of these remaining nineteen, the top three insure approximately half of all drivers. Significant voluntary discounts that insurers offered to policyholders during the mid-to-late nineties have mostly ended. Massachusetts consumers — especially our best drivers — are held hostage to a system that subjects them to some of the highest insurance rates in the nation.


Although our state has consistently led the nation in accidents and frequency of injury, the majority of our drivers have exemplary driving records. As in other industrial states, our densely populated, mainly urban Landscape is a factor in higher accident rates; but so is the practice of pooling the losses of high-risk drivers that allows injury fraud to thrive. Our current system allows a small number of our drivers to abuse the no-fault coverage mandated by our insurance code to generate highly questionable bodily injury claims, costing all drivers in the state millions of dollars in fraudulent claims payments.

If we are to create a healthy marketplace that benefits our drivers, we are obligated to eliminate excessive systemic costs. Reducing the dramatic injury claims frequency associated with auto insurance fraud is already seeing results in the City of Lawrence, where personal injury claims are down 68% in one year. Similar cooperative efforts between local law enforcement, insurers and licensing boards are also underway in Boston, Brockton, Lowell, Lynn, Springfield and Holyoke.

The bill I am filing today will eliminate state-determined rates, combat fraud and eliminate excessive costs to create a marketplace that offers greater consumer choice and reduced rates for the vast majority of our drivers. These important reforms will increase the number of carriers doing business in Massachusetts and offer immediate savings in the form of a mandated 5% rate reduction for all drivers rated as experienced with no surcharges or moving violations over the most recent six years of driving experience.

I urge your prompt and favorable consideration of this important insurance reform legislation.

Respectfully submitted,



MITT ROMNEY,
Governor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT REFORMING THE COMMONWEALTH'S AUTOMOBILE INSURANCE
SYSTEM AND PROVIDING RATE RELIEF.

*Be it enacted by the Senate and House of Representatives in General
Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 9 of chapter 16 of the General Laws, as
2 appearing in the 2002 Edition is hereby amended by inserting in
3 line 14, after “fled.” the following:—

4 In addition, the registrar shall be responsible for approving
5 driver training courses, including a behind-the-wheel driver
6 training course and an advanced driver training course.

1 SECTION 2. Section 8A of chapter 26 of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended by
3 striking in line 2, the words “division of insurance” and replacing
4 it with the words “registrar of motor vehicles”.

1 SECTION 3. Said section 8A of chapter 26, as so appearing, is
2 hereby further amended by striking in line 14, the words “com-
3 missioner of insurance” and replacing it with the word “registrar”.

1 SECTION 4. Said Section 8A of chapter 26, as so appearing, is
2 hereby repealed.

1 SECTION 5. Section 2 of chapter 29 of the General Laws, as
2 recently amended by section 10 of chapter 352 of the acts of 2004,
3 is hereby amended by inserting the following:—

4 Section 2000. (a) There is hereby established and set up on
5 the books of the commonwealth a separate fund to be known as
6 the Insurance Loss Control Fund consisting of revenues deposited
7 into the fund by insurance companies that write private passenger
8 automobile insurance in the state. Such companies shall contribute
9 a total of \$700,000 to the Loss Control Fund by the end of each

10 calendar year based on their pro rata share of exposures written in
11 this state as of the most recent calendar year. These costs shall not
12 be passed on to the insureds and shall not be used in any data used
13 to establish rates under any of the private passenger automobile
14 insurance laws.

15 (b) These funds shall be deposited into said fund to be
16 expended by the commissioner of insurance. They shall not be
17 subject to fringe or indirect costs. The funds shall be distributed
18 with out further appropriation by March 15th of each year in equal
19 amounts of \$100,000 to the municipal police departments in the 7
20 cities in which automobile insurance fraud is at the greatest levels
21 according to the data reported to the Insurance Fraud Bureau of
22 Massachusetts. For the first year, the funds shall be distributed to
23 the police departments of Springfield, Lawrence, Brockton, Lynn,
24 Revere, Chelsea and Boston. The fund recipients shall use such
25 funds exclusively to fight automobile insurance fraud in consulta-
26 tion with the Community Insurance Fraud Initiative of the Insur-
27 ance Fraud Bureau of Massachusetts. In order to receive a grant of
28 such funds for subsequent years, the police departments will be
29 required to prepare a report of their efforts identifying all actions
30 that they have made in this regard including the number of arrests,
31 descriptions of the facts underlying the arrests and the number of
32 prosecutions and convictions in this regard in addition to specific
33 actions that they propose to take in the subsequent year. These
34 reports shall be submitted to the commissioner and the Insurance
35 Fraud Bureau no later than December 31st of each year. Based on
36 the success of the police departments' respective fraud fighting
37 efforts, their proposals for fighting fraud in the subsequent year
38 and the statistical need for assistance in high fraud areas, the com-
39 missioner will decide, in consultation with the Insurance Fraud
40 Bureau, not later than March 1st of each year as to which police
41 departments will receive the funding for that year.

42 (c) The funds that the police departments receive in connection
43 with this program shall be used solely to fight automobile insur-
44 ance fraud. Any funds not expended by the police departments
45 within 12 months of their receipt shall be returned to the commis-
46 sioner who shall keep the funds in a separate account. These funds
47 shall be made available on a pro rata basis to the police depart-
48 ments selected to receive funding during the next calendar year in
49 accordance with this section.

1 SECTION 6. Section 1 of chapter 90 of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended by
3 striking in line 332, the words, “under five years of age”.

1 SECTION 7. Section 7AA of chapter 90, as appearing in the
2 2002 Official Edition, is hereby amended by striking in lines 1
3 through 5, inclusive and replacing it with the following:—

4 Section 7AA. No child weighing less than 60 pounds shall ride
5 as a passenger in a motor vehicle on any way unless such child is
6 properly fastened and secured, according to the manufacturer’s
7 instructions, by a child passenger restraint as defined in section
8 one.

1 SECTION 8. Said section 7AA of chapter 90, as so appearing,
2 is hereby further amended by striking in line 6, the words “five
3 years of age or older” and replacing it with “60 pounds or over”.

1 SECTION 9. Said section 7AA of chapter 90, as so appearing,
2 is hereby further amended by striking twice in line 22, the word
3 “twenty-five” and replacing it with the number “150”.

1 SECTION 10. Section 22F of chapter 90 as appearing in the
2 2002 Official Edition, is hereby amended by adding the following
3 new paragraph:—

4 Notwithstanding any other provision of this section, upon
5 receiving notification from the merit rating board that a driver has
6 had 5 surchargeable events within the past 3 years, the registrar
7 shall require the driver to participate in and complete a driver edu-
8 cation program satisfactory to the registrar. A driver ordered to
9 complete such a program may appeal the order to the registrar.
10 Such appeal shall be limited to the accuracy of the merit rating
11 board’s records. If such driver fails to provide to the registrar
12 proof of completion of such driver education program within 90
13 days after the registrar mails to the driver notice of such require-
14 ment, the registrar shall suspend the driver’s license or right to
15 operate a motor vehicle until the registrar receives proof of com-
16 pletion of such driver education program.

1 SECTION 11. Section 34A of chapter 90, as appearing in the
2 2002 Official Edition, is hereby amended by striking in lines 44
3 and 87, the words “other than” and replacing it with the word
4 “including”.

1 SECTION 12. Said section 34A of chapter 90, as so appearing,
2 is hereby further amended by striking in lines 49 and 92, the
3 following “com-” and is hereby further amended by striking in
4 lines 50 and 93, the letters “monwealth” and replacing it with
5 words “United States or Canada”.

1 SECTION 13. Said Section 34A of chapter 90, as so appearing,
2 is hereby further amended by striking lines 122 through 243,
3 inclusive.

1 SECTION 14. Section 34M of chapter 90, as appearing in the
2 2002 Official Edition, is hereby amended by striking the section
3 and replacing it with the following:—

4 Section 34M. (a) Every motor vehicle liability policy and every
5 motor vehicle liability bond, as defined in section 34A of this
6 chapter, issued or executed in this commonwealth shall provide
7 personal injury protection benefits as set forth in this section
8 except to the extent such defined benefits may be modified,
9 reduced or eliminated by the purchase of the deductible authorized
10 in this section.

11 (b) The following classes of persons shall be eligible to receive
12 personal injury protection payments:

13 (1) the named insured or obligor on a motor vehicle liability
14 policy or bond, respectively;

15 (2) members of the insured’s or obligor’s household;

16 (3) any authorized operator of or passenger in the insured’s or
17 obligor’s motor vehicle;

18 (4) any pedestrian, including persons operating bicycles, tricy-
19 cles and similar vehicles, persons on horseback or in vehicles
20 drawn by horses or other draft animals, who is struck by the
21 insured’s or obligor’s motor vehicle; and

22 (5) insureds, obligors and members of their households if
23 injured while in, upon, entering into or alighting from a motor
24 vehicle that does not include personal injury protection, or struck

25 while a pedestrian by such a vehicle; provided that persons who
26 recover through a tort action the losses and expenses resulting
27 from the motor vehicle accident shall not be eligible for payments
28 under this subsection.

29 (c) Notwithstanding subsection (b), an insurer may deny per-
30 sonal injury protection benefits to a person if he, while operating a
31 motor vehicle in the commonwealth, contributed to his injury in
32 any of the following ways:

33 (1) operating under the influence of alcohol or a controlled sub-
34 stance as defined in section 1 of chapter 94C or the vapors of
35 glue;

36 (2) while committing a felony or seeking to avoid lawful appre-
37 hension or arrest by a police officer; or

38 (3) by acting with specific intent to cause injury or damage to
39 himself or others.

40 (d) Payments shall be made only for losses and expenses
41 incurred by accident, and not suffered intentionally, while in or
42 upon, or entering into or alighting from, or being struck as a
43 pedestrian by the insured's or obligor's motor vehicle, without
44 regard to negligence or gross negligence or fault of any kind.

45 (e) The total limit amounts paid under personal injury protec-
46 tion coverage on account of injury to or death of any one person
47 shall be at least \$8,000; provided that personal injury protection
48 coverage shall pay no more than \$2,000 to the injured person if
49 the health care services as defined in subsection (h) provided to
50 the injured person as a result of a motor vehicle accident are, or
51 will be, compensated, paid or indemnified pursuant to any policy
52 of health, sickness or disability insurance or any group contract or
53 agreement to provide, pay for or reimburse the injured person for
54 health care services.

55 (f) No payments shall be made if the injured person is entitled
56 to payments or benefits under chapter 152.

57 (g) No payments shall be made to anyone who, at the time of
58 the accident, was operating or occupying a motorcycle, any motor
59 vehicle not subject to motor vehicle registration, or a motorized
60 bicycle, including a moped.

61 (h) Payments for personal injury protection coverage pursuant
62 to section 34S of this chapter shall be made to or for the benefit of
63 injured persons to cover losses and expenses that fall within the
64 following categories:

65 (1) Health care services, consisting of reasonable expenses
66 incurred within 2 years from the date of the accident for necessary
67 medical, surgical, diagnostic and dental services, including pros-
68 thetic devices and necessary ambulance, hospital, professional
69 nursing and funeral services;

70 (2) Lost income, consisting of (i) income actually lost by per-
71 sons employed or self-employed at the time of the accident,
72 because of the inability to work and earn compensation, in the
73 form of wages, salary, or their equivalent, but not other income
74 that would otherwise have been earned in the normal course of the
75 person's employment, such as bonuses or profit sharing; provided
76 that the payments for such lost compensation shall be limited to
77 an amount that will provide 75 percent of the person's average
78 weekly compensation for the year immediately preceding the acci-
79 dent, or (ii) the actual amount of diminution of earning power for
80 persons who are not employed or self-employed at the time of the
81 accident; and

82 (3) Household services, including reasonable amounts actually
83 paid to others, not members of the injured person's household, for
84 providing ordinary and necessary services that the injured person
85 would otherwise have performed, not for income but for the ben-
86 efit of himself or members of his household.

87 (i) No health, sickness or disability insurance policy, and no
88 contract or agreement of any entity to provide, pay for or reim-
89 burse the cost of health care services shall deny claims relating to
90 injuries suffered in a motor vehicle accident on the ground that the
91 injured person has personal injury protection coverage.

92 (j) Notwithstanding the provisions of section 70A of
93 chapter 111, an entity that has provided, paid for, or reimbursed an
94 injured person for health care services shall not recover any
95 amount against the injured person, shall not be subrogated to the
96 rights of the injured person for more than \$2,000 of personal
97 injury protection benefits, and shall not have a lien against the
98 injured person's personal injury protection benefits on account of
99 its provision, payment, or reimbursement of health care service.

100 (k) Within 2 years of the accident the insurer providing the per-
101 sonal injury protection coverage may, if the injured person
102 receiving benefits has any insurance policy that provides health
103 benefits or disability income coverage and the injured person is

104 unable or refuses to pay the cost of renewing or maintaining such
105 policies in force, tender to the injured person the cost of renewing
106 or maintaining such policy in force for the 2 year period. An
107 injured person who receives such tender shall continue the
108 existing policy of insurance or equivalent policy in force for the 2
109 year period. Prior to the receipt of such tender, the injured person
110 shall not be compelled to renew or maintain in force any policy of
111 insurance. The tender of the cost of renewing or maintaining
112 insurance shall not interfere with the claimant's choice of physi-
113 cian or medical treatment.

114 (1) Payments under personal injury protection coverage for lost
115 income, whether in the form of wages, salary, or their equivalent,
116 to persons who are entitled to compensation under any income
117 continuation program applicable to periods of inability to work,
118 shall be coordinated with benefits payable under such program to
119 ensure that the total amount payable under both programs is no
120 more than 75 percent of the person's average weekly compensa-
121 tion for the year immediately preceding the accident.

122 (1) The motor vehicle insurer shall reimburse those income
123 continuation programs which provide for accumulated benefits
124 which can be converted into cash or additional retirement credit
125 for the amount the program actually pays to the injured person;
126 said reimbursements shall not exceed 75 percent of the injured
127 person's average weekly compensation for the year immediately
128 preceding the accident.

129 (2) An injured person who receives compensation under a wage
130 continuation program and also recovers these benefits from
131 another source shall be entitled to reimburse the wage continua-
132 tion program with no loss of standing under such program.

133 (3) If payments to an injured person under any program for
134 wage continuation reduce the amounts paid under personal injury
135 protection for lost income, and the benefits under that program are
136 subsequently exhausted, rendering the injured person unable to
137 receive wage compensation for a later injury or illness, lost
138 income, in an amount equal to the reduction in the payments pre-
139 viously made to the injured person, shall be treated as lost income
140 resulting from the injury for which the personal injury protection
141 payments were made, if the loss is incurred within 1 year after the
142 receipt of the last benefit provided under personal injury protec-
143 tion coverage.

144 (m) A person injured in a motor vehicle accident who may be
145 eligible for payment of personal injury protection benefits shall
146 provide prompt notice to the insurer of any accident that may
147 form the basis of a claim. Such notice shall be given within 5 days
148 after the accident. This time limitation shall apply unless the
149 injured person or that person's representative submits written proof
150 providing clear and reasonable justification for the failure to
151 comply with such time limitation.

152 (n) Within 15 days after an insurer's receipt of notice of an
153 accident by a claimant under this section, the insurer shall furnish
154 such forms as are usually furnished by it for filing proofs of
155 claims.

156 (o) The personal injury protection benefits due and payable
157 under any motor vehicle liability policy or bond as a result of the
158 provisions therein providing personal injury protection benefits,
159 and any benefits due any person entitled to make claim under the
160 assigned claims plan established in accordance with section 34N
161 of this chapter, are granted in lieu of damages otherwise recover-
162 able by the injured person or persons in tort as a result of an acci-
163 dent occurring within the commonwealth.

164 (p) Every owner, registrant, operator or occupant of a motor
165 vehicle to which personal injury protection benefits apply who
166 would otherwise be liable in tort, and any person or organization
167 legally responsible for his acts or omissions, is hereby made
168 exempt from tort liability for damages because of bodily injury,
169 sickness, disease or death arising out of the ownership, operation,
170 maintenance or use of such motor vehicle to the extent that the
171 injured party is, or would be had he or someone for him not pur-
172 chased a deductible authorized by this section, entitled to recover
173 under those provisions of a motor vehicle liability policy or bond
174 that provide personal injury protection benefits or from the insurer
175 assigned. No such exemption from tort liability shall apply in the
176 case of an accident occurring outside the commonwealth. How-
177 ever, if any person claiming or entitled to benefits under the per-
178 sonal injury protection provisions of a policy or bond insuring a
179 vehicle registered in the commonwealth brings, in such a case, an
180 action in tort against the owner or person responsible for the oper-
181 ation of such a vehicle, amounts otherwise due such a person
182 under the provisions of this section shall not become due and

183 payable until a settlement is reached or a final judgment is ren-
184 dered in such a case and the amounts then due shall be reduced to
185 that extent that damages for expenses and loss otherwise recover-
186 able as a personal injury protection benefit are included in any
187 such settlement or judgment.

188 (q) Non-cooperation of an injured party or failure to timely pro-
189 vide required notices or proofs of claim under this section or
190 section 34S of this chapter shall be a defense to the insurer in any
191 suit for benefits authorized by this section and failure of an
192 insurer to pay benefits in the event of such non-cooperation shall
193 not in any way affect the exemption from tort liability granted
194 herein.

195 (r) Any insurer paying benefits in accordance with the provi-
196 sions of this section shall be subrogated to that exact extent to the
197 rights of any party it pays and may bring an action in tort against
198 any person liable for such damages in tort who is not exempt from
199 said liability as a result of the provisions of this section; provided,
200 however, that no insurer shall reduce or limit the amount of lia-
201 bility insurance otherwise available to an injured person as a
202 result of such subrogation. Said insurer is also hereby given the
203 right to make claim for all expenses it incurs on account of such
204 payments, including the net amount of benefits paid, costs of pro-
205 cessing claims for any such benefits, and the expenses of
206 enforcing this right, against any other insurer providing a motor
207 vehicle liability policy or bond on a motor vehicle registered in
208 the commonwealth, whose owner or operator would, except for
209 the exemption from tort liability provided in this section, be liable
210 for such damages in tort. Determination as to whether any insurer
211 is legally entitled to recover any such expense from another
212 insurer shall be made by agreement between the involved insurers,
213 or, if they fail to agree, by arbitration.

214 (s) Each insurer providing personal injury protection shall issue
215 to any person purchasing a motor vehicle liability policy or bond,
216 at his option, a policy endorsement, approved as to content by the
217 commissioner of insurance, which shall provide that there shall be
218 deducted from amounts that would otherwise be or become due to
219 the policyholder alone or to the policyholder and members of his
220 household, as the policyholder elects, an amount of either \$100,
221 \$250, \$500, \$1,000, \$2,000, \$4,000 or \$8,000, again as the policy-

222 holder elects, said amount to be deducted from the amounts other-
223 wise due each person subject to the deduction. Any person
224 electing such an endorsement or subject to such an endorsement
225 as a result of the policyholder's election shall have no right to
226 claim or to recover any amount so deducted from any owner, reg-
227 istrant, operator or occupant of a motor vehicle or any person or
228 organization legally responsible for any such owner's, registrant's,
229 operator's or occupant's acts or omissions who is made exempt
230 from tort liability by this section. Amounts deducted from pay-
231 ment in accordance with the provisions of this subsection shall not
232 have any effect upon the determination of whether or not the rea-
233 sonable and necessary expenses incurred as a result of any injury
234 exceed or do not exceed \$500, which determination may affect an
235 injured's person's rights under section 6D of chapter 231.

236 (t) Personal injury protection benefits and benefits due from an
237 insurer assigned shall be due and payable in accordance with
238 section 34S of this chapter, provided, however, that an insurer
239 may agree to a lump sum discharging all future liability for such
240 benefits on its own behalf and on behalf of the insured or obligor.
241 With respect to such benefits, and to medical coverage contained
242 in section 113C of chapter 175, no insurer shall refuse to pay a bill
243 for medical services submitted by a practitioner registered or
244 licensed under the provisions of chapter 112, if such refusal is
245 based solely on a medical review of the bill or of the medical
246 services underlying the bill, which review was requested or con-
247 ducted by the insurer, unless the insurer has submitted, for med-
248 ical review, such bill or claim to at least one practitioner
249 registered or licensed under the same section of chapter 112 as the
250 practitioner who submitted the bill for medical services.

1 SECTION 15. Section 34N of Chapter 90, as so appearing in
2 the 2002 Official Edition, is hereby amended by striking in
3 line 17, the words, "thirty-four A" and replacing it with the
4 number "34M"

1 SECTION 16. Chapter 90 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by inserting the
3 following:—

4 Section 34S. (a) All health care benefits provided under com-
5 pulsory motor vehicle insurance coverages, including bodily
6 injury liability and personal injury protection as defined in sec-
7 tions 34A and 34M of this chapter, respectively, and uninsured
8 motorists as defined in section 113L of chapter 175 shall be made
9 in accordance with this section.

10 (b) The rate of payment by insurers for such health care bene-
11 fits shall not exceed the rates established by the division of health
12 care finance and policy pursuant to section 13 of chapter 152; pro-
13 vided, however, that a different rate may be agreed upon between
14 the insurer and the health care provider.

15 (c) The total number of treatments for services not provided by
16 or under the direct supervision of a medical doctor licensed under
17 section 2 of chapter 112 or a dentist licensed under section 45 of
18 chapter 112, including but not limited to treatments by acupunc-
19 turists, physical therapists and chiropractors are limited to an
20 aggregate of 10 visits per injured person, per accident; provided,
21 however, that any additional such treatments may be covered by
22 endorsement subject to additional charge. This limitation shall not
23 apply to necessary hospital, surgical, dental, prosthetic, ambu-
24 lance, diagnostic, professional nursing services or funeral serv-
25 ices.

26 (d) Notwithstanding section 108 of chapter 175, in the case of a
27 claim for health care benefits, the claimant or that person's
28 assignee or representative shall submit a written proof of claim to
29 the insurer, including full particulars of the nature and extent of
30 the injuries and treatment received and contemplated, as soon as
31 reasonably practicable but, in no event later than 45 days after the
32 date services are rendered. This time limitation for the submission
33 of the proof of claim shall apply unless the claimant or that per-
34 son's representative submits written proof providing clear and rea-
35 sonable justification for the failure to comply with such time
36 limitation.

37 (e) Within 45 days from said receipt of proof of claim if pay-
38 ment is not made, the insurer shall notify the claimant in writing
39 specifying the reasons for the nonpayment or whatever further
40 documentation is necessary for payment of the claim within the
41 terms of the policy. If the insurer fails to comply with the provi-
42 sions of this paragraph, the insurer shall pay, in addition to any

43 benefits which inure to such claimant or provider, interest on such
44 benefits, which shall accrue beginning 45 days after the insurer's
45 receipt of the proof of claim at the rate of 1'h percent per month,
46 not to exceed 18 percent per year. The provisions of this para-
47 graph relating to interest payments shall not apply to a claim that
48 an insurer is investigating in good faith and in a reasonably
49 prompt manner because of suspected fraud.

50 (f) Upon request by the insurer, a claimant or that person's
51 assignee or representative shall:

52 (1) execute a written proof of claim under oath;

53 (2) as may reasonably be required submit to examinations
54 under oath by any person named by the insurer and subscribe the
55 same;

56 (3) provide authorization that will enable the insurer to obtain
57 medical records; and

58 (4) provide any other pertinent information that information
59 may assist the insurer in determining the mount due and payable.

60 (g) Notwithstanding the provisions of section 6D of 231, a
61 claimant for health service or wage loss expenses shall submit to
62 medical examination by physicians selected by, or acceptable to,
63 the insurer, when, and as often as, the insurer may reasonably
64 require.

65 (h) Any insurer may enter into a preferred provider arrange-
66 ment in compliance with the requirements of chapter one 176I;
67 provided, however, that the utilization review systems of a carrier
68 with a preferred provider arrangement shall not be subject to
69 review under the requirements of chapter 176I or chapter 176O.
70 Notwithstanding any other provision of this chapter, if an insurer
71 enters into a preferred provider arrangement for health care serv-
72 ices required for under this chapter, those individuals who are sub-
73 ject to the arrangement shall receive such care in the manner
74 prescribed by the arrangement; provided, however, that an indi-
75 vidual may receive immediate emergency treatment from a health
76 care provider who is not a member of the managed care organiza-
77 tion, and the insurer shall pay the reasonable and necessary costs
78 of such treatment.

1 SECTION 17. Section 4C of chapter 175 of the General Laws,
2 as appearing in the 2002 Official Edition, is hereby amended by

3 inserting in line 2, after the word “homeowners” the words “and
4 automobile”.

1 SECTION 18. Said section 4C of chapter 175, as so appearing,
2 is hereby further amended by striking in line 3, the letters “one
3 hun-” and is further amended by striking in line 4, the following,
4 “dred and seventy-five C” and replacing it with the following:—
5 “175C or the assigned risk plans, formed pursuant to the provi-
6 sions of sections 113H and 113U of chapter 175,”.

1 SECTION 19. Said section 4C of chapter 175, as so appearing,
2 is hereby further amended by striking in line 5, the word “home-
3 owners” and replacing it with the word “such”.

1 SECTION 20. Section 22C of chapter 175, as appearing in the
2 2002 Official Edition, is hereby amended by striking line 31, and
3 is further amended by striking in line 32, the words, “the result of
4 such cancellation” and replacing it with the following:—
5 refund all money due to the insured as the result of such cancel-
6 lation as required under section 113A of chapter 175.

1 SECTION 21. Section 108D of chapter 175, as appearing in the
2 2002 Official Edition, is hereby amended by striking in line 1, the
3 letter “W” and replacing it with “Except as provided by subsec-
4 tion (b) of section 34S of chapter 90, w”.

1 SECTION 22. Subsection (6) of Section 113A of Chapter 175,
2 as appearing in the 2002 Official Edition, is hereby amended by
3 striking lines 173 through 178, inclusive and replacing it with the
4 following:—
5 Insurers may offer such policies or bonds or may issue an
6 extension of any existing policy or bond for a minimum period of
7 6 months but no longer than 2 years,.

1 SECTION 23. Section 113B of chapter 175, as appearing in the
2 2002 Official Edition, is hereby repealed.

1 SECTION 24. Section 1131I of Chapter 175, as appearing in
2 the 2002 Official Edition, is hereby amended by striking the
3 section and replacing it with the following:—

4 Section 113H. Except as otherwise provided in subsection (c),
5 the following provisions shall not apply to the residual market for
6 private passenger automobile insurance.

7 (a) Insurance companies undertaking to issue motor vehicle lia-
8 bility policies or bonds, except for private passenger automobile
9 policies or bonds, both as defined in section 34A of chapter 90,
10 shall cooperate in the preparation and submission of a plan which
11 shall provide motor vehicle insurance to applicants for such poli-
12 cies and bonds who have been unable to obtain insurance through
13 the method by which insurance is voluntarily made available;
14 except that the plan shall provide that no insurance company shall
15 be required to issue such policy or execute such bond if:

16 (1) The applicant or any person who usually drives the motor
17 vehicle has failed to pay an insurance company any motor vehicle
18 insurance premiums due or contracted during the preceding 12
19 months; or

20 (2) Any person who usually drives the motor vehicle is unli-
21 censed.

22 (b) Such a plan shall provide for the fair and equitable appor-
23 tionment among such insurance companies of premiums, losses or
24 expenses, or any combination thereof. Such a plan shall provide
25 that at least the following coverages shall be made available:

26 (1) bodily injury liability and property damage liability cov-
27 erage in at least the minimum amounts required by law;

28 (2) personal injury protection;

29 (3) medical payments coverage, to a limit of at least \$5,000

30 (4) increased limits of bodily injury liability coverage in an
31 amount to bring the total bodily injury liability coverage available
32 for any 1 accident to \$250,000 per person and \$500,000 per acci-
33 dent;

34 (5) increased property damage liability limits in an amount to
35 bring the total property damage liability coverage available for
36 any one accident to \$50,000;

37 (6) uninsured motorist limits in an amount up to the bodily
38 injury liability limits of the policy;

39 (7) physical damage insurance, which shall mean: (A) collision
40 coverage or limited collision coverage, (B) fire and theft cov-
41 erage, or (C) comprehensive coverage, so-called, as those cover-
42 ages are defined in sections 34A and 340 of chapter 90 and

43 section 1130. The plan shall permit the refusal of collision, fire,
44 theft or comprehensive coverage or the charging of rates at the
45 discretion of the insurer, under the following circumstances:

46 (i) comprehensive, fire and theft or collision coverage on a
47 vehicle customarily driven by or owned by persons convicted
48 within the most recent 5 year period of any category of vehicular
49 homicide, auto insurance related fraud, or motor vehicle theft;

50 (ii) comprehensive, fire and theft or collision coverage on a
51 vehicle customarily driven by or owned by persons who have,
52 within the most recent 5 year period, made an intentional and
53 material misrepresentation in making claim under such coverages;

54 (iii) collision coverage on a vehicle customarily driven by or
55 owned by persons who have been involved in 4 or more accidents
56 in which such person has been deemed to be at fault in excess of
57 50 per cent within the 3 years immediately preceding the effective
58 date of the policy;

59 (iv) comprehensive or fire and theft coverages on a vehicle cus-
60 tomarily driven by or owned by persons who have had 2 or more
61 total theft or fire claims within the 3 years immediately preceding
62 the effective date of the policy;

63 (v) comprehensive, fire and theft or collision coverage on a
64 vehicle customarily driven, or owned by persons convicted 1 time
65 within the most recent 3 year period of any category of driving
66 while under the influence of alcohol, drugs or the vapors from
67 glue;

68 (vi) comprehensive, fire and theft or collision coverage on any
69 motor vehicle for which a salvage title has been issued by the reg-
70 istrar of motor vehicles unless a new certificate of title has been
71 issued pursuant to section 20D of chapter 90D; or

72 (vii) comprehensive, fire and theft or collision coverage on a
73 high-theft vehicle which does not have at least a minimum anti-
74 theft or auto recovery device as prescribed by the commissioner of
75 insurance. The commissioner may designate as a “high-theft
76 vehicle” any vehicle, classified according to make, model and
77 year of manufacture, which has both above-average incidence of
78 theft and above-average original sales price, and may prescribe
79 appropriate anti-theft or auto recovery devices for such vehicles.

80 (c) (1) Such a plan and the plan for the private passenger auto-
81 mobile residual market established pursuant to section 113U of

82 175 shall be prepared and administered by a single governing
83 committee consisting of 13 members appointed by the commis-
84 sioner for terms of 6 years. Six of the members shall be appointed
85 from insurance companies participating in the plan and 1 member
86 shall be appointed from an insurance company, which, based on
87 data available as of December 31 of the most recent calendar year,
88 writes less than 2 percent of the annual statewide reported prop-
89 erty damage liability exposures, who is unaffiliated with any other
90 insurance company; and 6 members shall be appointed who are
91 insurance producers. The provisions of this section shall not be
92 construed so as to alter or amend the terms of the present gov-
93 erning members. The governing committee shall be responsible
94 for the hiring of the employees of the plan.

95 (2) In the event that a company represented on the committee
96 decreases its book of automobile business in the commonwealth
97 by more than 10 percent from the previous calendar year, as deter-
98 mined by the commissioner, the member representing such com-
99 pany shall cease to be a member of the committee and a new
100 company and a member thereof shall be appointed as prescribed
101 herein. Not more than 1 member from any 1 insurance group
102 under the same management shall serve on the committee at the
103 same time.

104 (d) The plan shall provide that every licensed producer shall be
105 assigned to at least 1 servicing carrier; except that the governing
106 committee shall not be required to make any such assignment if,
107 subject to reasonable standards adopted by the governing com-
108 mittee:

109 (1) the producer has been convicted of a dishonest act related to
110 his occupation as an insurance producer;

111 (2) the producer's license to engage as an insurance producer
112 has been revoked;

113 (3) there has been a material and substantial breach of a con-
114 tract between a servicing carrier and a producer; or

115 (4) the producer has an uncured default in remittance of any
116 premiums due the servicing carrier.

117 (e) The plan shall permit the appointment and participation of a
118 reasonable number of servicing carriers and the plan shall estab-
119 lish reasonable eligibility requirements for appointment as a ser-
120 vicing carrier, including but not limited to, the maintenance of a

121 specific investigative unit to investigate suspicious or question-
122 able motor vehicle insurance claims for the purpose of eliminating
123 fraud. Not more than 1 insurer in a group under the same manage-
124 ment shall serve as a servicing carrier at the same time. The plan
125 shall provide a specific investigative unit to monitor the effective-
126 ness of servicing carrier fraud control efforts. No domestic insur-
127 ance company shall be denied participation as a servicing carrier
128 based solely upon its share of the Massachusetts motor vehicle
129 insurance market.

130 (f) The governing committee shall on or before March 31, 2006
131 and thereafter not later than 2 years after such standards were
132 most recently approved, prepare performance standards for the
133 handling and payment of claims by the servicing carriers. Such
134 standards shall be designed to ensure the speedy settlement of
135 valid claims at the lowest reasonable cost and the denial of fraud-
136 ulent or otherwise invalid claims. Such performance standards
137 shall be submitted to the commissioner of insurance who, after a
138 public hearing, shall approve or modify such performance stan-
139 dards. The plan shall collect and maintain data on compliance
140 with the performance standards by servicing carriers. Such infor-
141 mation shall be reported annually to the commissioner of insur-
142 ance and may be the basis for adjustments to premiums.

143 (g) No insurer acting as a servicing carrier of the plan, or their
144 employees or producers, no member company, employee or pro-
145 ducer, or any employee of the plan or any official or officer of any
146 law enforcement agency, shall be subject to civil or criminal lia-
147 bility in a cause of action of any kind for furnishing any evidence
148 or information to any specific investigative unit created pursuant
149 to this section, its employees or any law enforcement agency or
150 any other insurer relating to an investigation conducted involving
151 losses under liability or physical damage coverages for motor
152 vehicles.

153 (h) Changes of assignment of servicing carriers, for reasonable
154 business purposes, may be made upon application to and approval
155 by the governing committee, provided there is not significant dis-
156 ruption of the marketplace and no unfair or inequitable apportion-
157 ment of premiums, losses or expenses.

158 (i) The plan shall include guidelines for installment payment
159 plans to be provided by servicing carriers.

160 (j) To control the size of the population of the plan, the plan
161 shall annually provide for territorial and classification credits for
162 those companies voluntarily writing private passenger automobile
163 insurance within those territories and classifications that would
164 otherwise be disproportionately represented in the plan. The size
165 of the credits shall be such as to enhance the prospects that no
166 classification or territory is disproportionately represented in the
167 plan.

168 (k) All policies insured through the plan shall be rated in accor-
169 dance with the manual of classifications, rules and rates, and
170 rating plans filed by or on behalf of the plan under the provisions
171 of chapter 175A. The statistical data previously and hereafter
172 recorded under this section for risks insured through the plan shall
173 be given due consideration in developing the rates for such risks.

174 (l) The premium charges filed by or on behalf of the plan may
175 provide that such premium charges for any risk insured in the plan
176 will exceed the premium charges that would be used by each
177 risk's servicing carrier for that risk if such risk were not insured in
178 the plan, provided, however, that such a filing shall not go into
179 effect if the commissioner finds that the rate is excessive, inade-
180 quate or discriminatory, or that the rate would adversely affect the
181 financial condition of the insurer or constitute predatory pricing.

182 (m) Meetings of the governing committee shall be conducted in
183 accordance with the provisions of section 11A½ of chapter 30A.

184 (n) Before becoming effective and upon any written request of
185 the commissioner on a new plan thereafter, any such plan shall be
186 filed with the commissioner, who shall conduct a public hearing
187 within 30 days to determine whether such plan is consistent with
188 public policy and meets the requirements of this section. At such
189 hearing, insurance companies and any other party having a direct
190 interest shall have an opportunity to be heard. Unless sooner
191 approved or disapproved in writing by the commissioner, such
192 plan shall be deemed to meet the requirements of this section
193 within 30 days after the public hearing.

194 (o) Amendments to such plan shall be prepared and filed with
195 the commissioner as herein provided with respect to the original
196 plan. Such amendments, unless sooner approved or disapproved in
197 writing by the commissioner, shall be deemed to meet the require-
198 ments of this section in 30 days from the date of filing. The com-

199 commissioner shall, prior to the disapproval of any such amendments,
200 issue a notice specifying in what respects the amendments do not
201 meet the requirements of this section and fixing a date for a public
202 hearing thereon, at which insurance companies and any other par-
203 ties having a direct interest shall have an opportunity to be heard.

204 (p) If the commissioner shall have requested the submission of
205 a new plan or amendments to the plan, and no such plan or
206 amendments have been filed with and approved by the commis-
207 sioner within 60 days after such request, the commissioner may, if
208 he deems it necessary to carry out the purposes of this section,
209 prepare and publish proposed amendments or a proposed plan that
210 in his opinion would carry out the purposes of this section. He
211 shall submit a copy of such proposed amendments or proposed
212 plan to the joint committee on financial services at the time of
213 publication, and shall schedule a public hearing thereon not less
214 than 10 days after the publication thereof. After such hearing the
215 commissioner may promulgate such plan or amendments thereto
216 as he finds will best carry out the purposes of this section.

217 (q) When such plan or amendment has been approved or
218 deemed approved, no insurer may thereafter issue a motor vehicle
219 policy or bond unless such insurer shall participate in such an
220 approved plan.

221 (r) Any insurer and any other party affected may appeal to the
222 commissioner from any ruling or decision with reference to the
223 operation of such plan.

224 (s) The rules for such plan shall require that separate statistical
225 data be recorded for risks insured in the plan and may provide
226 incentives and penalties to prevent abuse of such plan. The rules
227 for such plan shall also include a provision giving the commis-
228 sioner authority, after due hearing and investigation, to order that
229 any company he finds using practices which have the effect of dis-
230 tributing risks or expenses or losses of risks unfairly and
231 inequitably on other companies or producers be assigned a share
232 of the expenses and losses of said risks to insure a fair and equi-
233 table distribution. The commissioner may relieve any insurer of a
234 part or all of its obligations under the plan, if he finds that contin-
235 uation of such obligations would threaten the solvency of such
236 insurer.

237 (t) In appointing a statistical agent, the commissioner shall
238 require, in addition to all other duties and responsibilities, that the
239 statistical agent oversee and conduct a closed claim study so-
240 called. In addition to any other information that the commissioner
241 may require, said study shall include the following: the number of
242 claims filed in a particular year, the average property damage lia-
243 bility coverage claim for said year, the average collision claim for
244 said year, the number of lawsuits filed in said year, the number
245 and average dollar amount granted in court tried cases in said
246 year, the number and average dollar amount agreed upon in out of
247 court settlements in said year, the average payment arising out of
248 property damage in an out of court settlement and through a judi-
249 cial decision, the number of multiple claims filed under the same
250 vehicle over a 3 year period, the number of claims closed in said
251 year, the number of claims closed without payment in said year
252 and overall motor vehicle accident severity and frequency. The
253 study shall also include a report of the profits and losses of each
254 property and casualty company writing private passenger motor
255 vehicle coverage in the commonwealth.

256 (u) Any insurer or group of insurers participating in such plan
257 and any person aggrieved shall be authorized to bring a complaint
258 to the commissioner alleging unfair or unreasonable or improper
259 practices by any insurer or producer. The commissioner shall, in
260 all such cases, cause a proper hearing on such complaint to be
261 held and shall issue such orders as he then deems appropriate.

262 (v) If the commissioner finds that, after due hearing and inves-
263 tigation, any activities or practices of any insurer or producer in
264 connection with the submission or operation of such plan is unfair
265 or unreasonable or inconsistent with the provisions of this section,
266 he may issue a written order specifying in what respects such
267 activity or practice is unfair or unreasonable or inconsistent with
268 the provisions of this section, and requiring the discontinuance of
269 such activity or practice.

270 (w) Any ruling, order or decision of the commissioner under
271 authority of this section shall be subject to review by appeal to the
272 superior court department of the trial court of Suffolk county at
273 the instance of any party in interest, which appeal shall be on the
274 basis of the record of the proceeding before the commissioner.
275 Said court shall have jurisdiction to modify, amend, annul, review

276 or affirm such action, order, finding or decision, shall review all
277 questions of fact and of law involved therein, and may make any
278 other appropriate order or decree. Said court shall determine
279 whether the filing of the appeal shall operate as a stay of any such
280 order or decision of the commissioner.

281 (x) The plan shall adopt performance standards for claims han-
282 dling and anti-fraud efforts, for risks insured or reinsured by the
283 plan. All insurers issuing policies insured or reinsured by the plan
284 shall comply with said performance standards. The plan shall
285 develop pre- and post-payment screening systems designed to
286 identify claims overpayments, possible fraudulent claims, and
287 inefficient claims handling practices. The plan shall provide for
288 periodic audits of all members of the plan as required by the com-
289 missioner. The audit shall include policies not insured or reinsured
290 by the plan in order to determine whether there is a difference in
291 claims handling between policies insured voluntarily and those
292 insured or reinsured by the plan. Noncompliance with said perfor-
293 mance standards and audit requirements shall constitute a viola-
294 tion of the provisions of this chapter. The plan shall propose and
295 the commissioner shall establish rules concerning the submission
296 of data by insurers. Such rules shall include penalties for the late
297 submission of data, the submission of faulty data, and the failure
298 of insurers to comply with the express terms of audit requests. In
299 addition, the plan shall provide for appropriate adjustments in the
300 allocation of premiums, losses and expenses among companies for
301 companies which do not meet such performance standards or
302 which do not comply with said audit requirements. Such adjust-
303 ments shall reflect excessive claims payments which result from
304 said noncompliance.

1 SECTION 25. Section 113I of chapter 175, as appearing in the
2 2002 Official Edition, is hereby amended by striking the section
3 and replacing it with the following:—

4 Section 113I. Nothing in this chapter shall be construed to
5 abridge or restrict the freedom of contract between insurers and
6 producers or to require an insurer to issue policies in any way
7 other than through its ordinary and usual method of marketing
8 except that insurers shall, pursuant to the plan approved under
9 section 113U, be required to recognize and to permit immediate

10 certification of insurance by and to pay a commission of 10 per-
11 cent to any licensed producer designated as the producer of record
12 by applicants for insurance or renewal thereof. The governing
13 committee identified under section 113U can change this commis-
14 sion on the ground that a different commission is fairer and more
15 reasonable under the circumstances provided the governing com-
16 mittee receives prior written approval from the commissioner at
17 least 30 days in advance of setting such commission.

1 SECTION 26. Section 1130 of chapter 175, as appearing in the
2 2002 Official Edition is hereby amended by striking in line 12 the
3 following “Notwithstanding” and is hereby further amended by striking
4 lines 13 through 15, inclusive and is hereby further amended by
5 striking in line 16, the following “age” and replacing it with the
6 following:—

7 There shall be a \$100 deductible for the repair or replacement
8 of glass under comprehensive coverage. In the event the glass can
9 be safely repaired, and the insured elects repair rather than
10 replacement, the insurer shall waive this deductible.

1 SECTION 27. Section 113P of chapter 175, as appearing in the
2 2002 Official Edition, is hereby repealed.

1 SECTION 28. Chapter 175, as so appearing, is hereby amended
2 by inserting the following:—

3 Section 113U. Notwithstanding any other provisions of this
4 chapter, the commissioner of insurance may devise an assigned
5 risk plan for private passenger automobile insurance in the
6 residual market. The rates for the assigned risk plan shall be
7 developed in accordance with actuarially sound and established
8 practices and procedures and shall be based exclusively on the
9 losses, premiums and expenses of plan participants. Such plan
10 will be administered by the governing committee, pursuant to
11 section 113H of this chapter. The commissioner shall promulgate
12 such rules and regulations as necessary to implement his plan.

1 SECTION 29. Section 162C of Chapter 175, as appearing in the
2 2002 Official Edition, is hereby repealed.

1 SECTION 30. Section 162D of Chapter 175, as appearing in
2 the 2002 Official Edition, is hereby repealed.

1 SECTION 31. Section 193R of chapter 175, as appearing in the
2 2002 Official Edition, is hereby amended by striking in line 26,
3 the following “provided, however, that insurance issued pursu-”
4 and is further amended by striking lines 27 through 30, inclusive.

1 SECTION 32. Said section 193R of chapter 175, as so
2 appearing, is hereby further amended by striking in lines 32 and
3 33, the words “having a proper insurable interest” and replacing it
4 with the words “who satisfies the eligibility criteria of the plan”.

1 SECTION 33. Said section 193R of chapter 175, as so
2 appearing, is hereby further amended by striking in lines 70 and
3 77, the words “fixed and”.

1 SECTION 34. Said Section 193R of chapter 175, as so
2 appearing, is hereby further amended by striking in line 84, with
3 the words “Every mutual company providing insurance in accor-
4 dance” and is hereby further amended by striking lines 85 though
5 88, inclusive.

1 SECTION 35. Section 16 of chapter 175A of the General Laws,
2 as appearing in the 2002 Official Edition, is hereby amended by
3 striking in line 1 the word “wilfully”.

1 SECTION 36. Chapter 175E of the General Laws, as appearing
2 in the 2002 Official Edition, is hereby repealed.

1 SECTION 37. Section 1 of Chapter 175I of the General Laws,
2 as appearing in the 2002 Official Edition, is hereby amended by
3 striking lines 1 through 3, inclusive and replacing it with the
4 following:—

5 Section 1. (a) The obligations imposed by this chapter shall
6 apply to an insurance institution, insurance representative or
7 insurance-support organization which in the case of life, health,
8 disability and private passenger automobile insurance:

1 SECTION 38. Said section 1 of said Chapter 175I, as so
2 appearing, is hereby further amended by striking lines 9 through
3 11, inclusive and replacing it with the following:—

4 (b) In the case of life, health, disability and private passenger
5 automobile insurance, the rights granted by this chapter shall
6 extend to the following residents of the commonwealth:

1 SECTION 39. Section 2 of said Chapter 175I, as appearing in
2 the 2002 Official Edition, is hereby amended by inserting in
3 line 75, after the letter “A.” the following:—

4 Insurance companies engaged in the business of private pas-
5 senger automobile insurance are insurance institutions under this
6 definition.

1 SECTION 40. Said section 2 of said Chapter 175I, as so
2 appearing, is hereby further amended by adding in line 81, after
3 the word “transactions” the following “,or to any governmental
4 body or regulatory agency”.

1 SECTION 41. Said section 2 of said Chapter 175I, as so
2 appearing, is hereby further amended by inserting after line 94,
3 the following:—

4 (3) “Insurance-support organization” specifically includes the
5 Automobile Insurers Bureau, Commonwealth Automobile Rein-
6 surers and the Insurance Fraud Bureau, or their successor organi-
7 zations.

1 SECTION 42. The General Laws are hereby amended by
2 inserting after chapter 176J the following:—

3 CHAPTER 175K

4 FLEXIBLE RATINGS FOR PRIVATE PASSENGER 5 AUTOMOBILE INSURANCE

6 Section 1. (a) The commissioner shall, on or before December
7 15, 2005, fix and establish fair and reasonable rates for all cover-
8 ages based on accident involvement in connection with the
9 issuance or execution of private passenger motor vehicle insur-

10 ance policies or bonds that become effective on January 1, 2006.
11 These rates shall also apply to insureds that are ceded to CAR or
12 insured through the assigned risk plan with policy effective dates
13 between January 1, 2006 through December 31, 2006. These rates
14 shall also apply to any other policyholder of a company where
15 said company does not have an independent rate on file with the
16 commissioner for all or any portion of the period January 1, 2006
17 through December 31, 2006. This subsection shall be effective
18 through December 15, 2006.

19 (b) Notwithstanding subsection (a), the commissioner shall not
20 alter the statewide average rate level for bodily injury or personal
21 injury protection based on accident involvement as defined in sec-
22 tions 34A and 34M of chapter 90 or section 113C of chapter 175.
23 The statewide average rates that will be implemented for bodily
24 injury and personal injury protection will be equal to the average
25 rate that the commissioner set on December 15, 2004 and that
26 were in place and became effective as of January 1, 2005. These
27 rate levels will remain in effect for policies with effective dates
28 through December 31, 2007. In accordance with the provisions of
29 subsections (j) and (k) of section 2, insurance companies may file
30 to increase the statewide average rates for bodily injury or per-
31 sonal injury protection between January 1, 2006 and December
32 31, 2007 only in the event that a change occurs in the fee schedule
33 applicable to these coverages under section 34S of chapter 90. In
34 such an event, the filed change shall be commensurate with the
35 amount of the change in the fee schedule as applied to the services
36 provided to those injured by automobile accidents. This subsec-
37 tion shall be effective through December 31, 2007.

38 (c) Not later than August 1, 2006, the industry or its designated
39 rating or advisory organization shall file with the commissioner
40 loss and claim experience current through December 31, 2005.
41 Such data shall include, but not be limited to, accident year losses,
42 trends, and driver class and territory pure premium relativities for
43 each coverage. This subsection shall be effective from January 1,
44 2005 through December 31, 2006.

45 (d) Not later than August 1, 2007, the industry or its designated
46 rating or advisory organization shall file with the commissioner
47 loss and claim experience current through December 31, 2006.
48 Such data shall include, but not be limited to, accident year losses,

49 trends, and driver class and territory pure premium relativities for
50 each coverage. The industry or its designated rating or advisory
51 organization will also file with the commissioner by such date a
52 rate and rating plan for drivers insured through the assigned risk
53 plan to be effective January 1, 2008. This subsection shall be
54 effective from January 1, 2006 through December 31, 2007.

55 (e) The commissioner may make such rules and regulations as
56 are necessary or proper to carry out the provisions of this section.

57 Section 2. (a) For purposes of this chapter, the following words
58 shall have the following meanings:

59 “Commissioner”, the Commissioner of Insurance.

60 “Compulsory insurance”, bodily injury liability and personal
61 injury protection as defined in section 34A and 34 M of
62 chapter 90, property damage liability as defined in section 340 of
63 chapter 90, and uninsured motorists as defined in section 113L of
64 chapter 175.

65 “Flex band”, the percentage change in the average rate level for
66 insurance policies covering losses or liabilities within the private
67 passenger automobile insurance market wherein increases or
68 decreases shall be no greater than the stated amounts in subsec-
69 tions (b), (c), (d), and (e) of the prior average rate implemented
70 for all classifications and risks written by the filing company. Rate
71 increases or decreases within the flex band shall be allocated to
72 classifications and risks based on the actuarially indicated rate for
73 said classification or risk.

74 “Insurance company” or “insurer”, a company licensed to or
75 authorized to write private passenger automobile insurance pur-
76 suant to section 47 of chapter 175.

77 “Reference filing”, upward and downward rate deviations
78 adopted by an insurer relative to the commissioner’s fix and estab-
79 lish rate effective from January 1, 2006 through December 31,
80 2006. An insurer’s upward and downward rate deviations must be
81 actuarially supported by the insurer’s loss and expense experience.

82 (b) All insurers writing private passenger automobile insurance
83 for policies effective on or after January 1, 2006 and on or before
84 December 31, 2006, must file a reference filing to the commis-
85 sioner’s rates established for that period. The reference filing, at a
86 minimum, shall include a minus 5 percent rate rollback for those
87 vehicles rated based on the experience of insured drivers who

88 (1) have a minimum of 6 years of driving experience and who
89 have had no at-fault accidents or traffic violations in the 6 consec-
90 utive years preceding the policy's effective date or (2) are occa-
91 sional operators who have less than 6 years driving experience
92 and who have had no at-fault accidents or violations. Insurers' ref-
93 erence filings may not apply upward rate deviations to drivers eli-
94 gible for the roll back. This subsection shall be effective from
95 January 1, 2006 through December 31, 2006.

96 (c) Overall average rate level increases or decreases proposed
97 by an insurer, for all coverages combined, of 5 percent above or
98 below the commissioner's rate as set for 2006, shall take effect.
99 Notwithstanding this provision, no vehicle's rate for liability cov-
100 erages can increase more than 15 percent in any one 12 month
101 period, provided that there is no change in the individual insured's
102 circumstances including, but not limited to, coverages or coverage
103 options purchased, driving record, years of driving experience,
104 vehicles insured, the garaging location of the insured's vehicle, or
105 the company insuring the vehicle. Insurers must use the territory
106 definitions prescribed by the commissioner for policies effective
107 in 2006. This subsection shall be effective from January 1, 2006
108 through December 31, 2006.

109 (d) Overall average rate level increases or decreases, for all
110 coverages combined, of 6 percent above or below the company's
111 rate that is currently in effect on December 31, 2006 shall take
112 effect. Notwithstanding this provision, no vehicle's rate for lia-
113 bility coverages can increase more than 15 percent in any one 12
114 month period, provided that there is no change in the individual
115 insured's circumstances including, but not limited to, coverages or
116 coverage options purchased, driving record, years of driving expe-
117 rience, vehicles insured, the garaging location of the insured's
118 vehicle, or the company insuring the vehicle. Insurers must use
119 the territory definitions prescribed by the commissioner for poli-
120 cies effective in 2006. This subsection shall be effective from the
121 period January 1, 2007 through December 31, 2007.

122 (e) Overall average rate level increases or decreases, for all
123 coverages combined, of 7 percent above or below the company's
124 rate that is currently in effect, shall take effect. Notwithstanding
125 this provision, no vehicle's rate for liability coverages can
126 increase more than 15 percent in any one 12 month period, pro-

127 vided that there is no change in the vehicle's circumstances
128 including, but not limited to, coverages or coverage options pur-
129 chased, driving record, years of driving experience, vehicles
130 insured, the garaging location of the insured's vehicle, or the com-
131 pany insuring the vehicle. Insurers must use the territory defini-
132 tions prescribed by the commissioner for policies effective in
133 2006. This subsection shall be effective for the period January 1,
134 2008 through December 31, 2008.

135 (f) Overall average rate level increases or decreases, for all cov-
136 erages combined, of 10 percent above or below the company rate
137 that is currently in effect, shall take effect. Notwithstanding this
138 provision, no vehicle's rate for liability coverages can increase
139 more than 15 percent in any one 12 month period, provided that
140 there is no change in the vehicle's coverages or coverage options
141 purchased, driving record, years of driving experience, vehicles
142 insured, the garaging location of the insured's vehicle, or the com-
143 pany insuring the vehicle. Insurers may vary rates by town code,
144 but they may not geographically base rates that further divide the
145 town code by zip code or other means. This subsection shall be
146 effective from the period January 1, 2009 through December 31,
147 2009.

148 (g) In the event that an insurance company that wrote less than
149 0.1% of all private passenger vehicles insured in Massachusetts as
150 of December 31,, 2005, first files independent private passenger
151 automobile insurance rates in Massachusetts after December 31,
152 2006 and before January 1, 2010, said company shall be entitled
153 to use the commissioner's rate as set for 2006, in addition to the
154 flex band identified in the above subsections (c) through (f) cumu-
155 latively for all years. During its second year of doing business in
156 Massachusetts, such filing company will be subject to the flex
157 band in effect for that year only.

158 (h) An insurance company that wrote 0.1% or more of all pri-
159 vate passenger vehicles insured in Massachusetts as of December
160 31, 2005 that chooses not to independently file rates utilizing the
161 flex bands in the above subsections (c) through (f) shall be limited
162 to the commissioner's 2006 rate as modified by the flex band in
163 effect of the year of the filing only.

164 (i) An insurer may file pursuant to this section more frequently
165 than once per year in any 12 month period provided that the rates

166 applied to any policy are the rates in effect on the effective date of
167 the policy. Insurers may not cancel policies mid-term for the sole
168 purpose of changing the rate applicable to the policy.

169 (j) The filing company shall notify all insureds of any such
170 changes as part of its renewal notice that shall be mailed or other-
171 wise delivered by written notice at least 30 but not more than 60
172 days in advance of the end of the policy period, to the named
173 insured, at the address identified in the policy. Said notice shall
174 state the prospective rate at which coverage will be offered and
175 the duration of the policy period.

176 (k) All rate filings referenced in subsections (b) through (f)
177 shall be made in accordance with the provisions of section 6 of
178 chapter 175A.

179 (1) In addition to the filing requirements of section 6 of
180 chapter 175A, all rate filings must contain actuarial support and
181 must be signed by a member of the Casualty Actuarial Society
182 attesting that the requested filing will not produce rates that are
183 excessive, inadequate or unfairly discriminatory for the risks to
184 which they apply, and do not threaten the financial stability of the
185 filing company.

186 (m) In approving an insurer's filing for a rate level change out-
187 side the flex band, the insurer making the filing shall show that, if
188 the rate proposed by the insurer is:

189 (1) above the flex band, the rates available within such band are
190 inadequate for the risks insured and that failure to approve the
191 filing will cause a lack of availability in the relevant market; or

192 (2) below the flex band, approval of the filing will not
193 adversely affect the financial condition of the insurer or constitute
194 predatory pricing.

195 (n) No company shall consider a surchargeable accident or vio-
196 lation of 5 years or older for the purposes of rating or under-
197 writing.

198 (o) Rates for an insured age 65 or older, who otherwise quali-
199 fies for the lowest rate classification applicable to drivers gener-
200 ally, shall be 25 percent less than the applicable rate for such
201 classification. All persons who are entitled to such reduction in
202 rate shall be notified annually of such reduction. The percentage
203 of the reduction for each coverage for an insured aged 65 or older
204 shall be itemized on the motor vehicle liability policy. In the event

205 that an insured reaches the age of 65 during the policy year, and is
206 otherwise entitled to said reduction, said insured shall receive a
207 reduction in premium on a pro rata basis for the remainder of the
208 policy year.

209 (p) If at any time the commissioner finds that a filing does not
210 meet the requirements of this chapter, the hearing process pro-
211 vided for in section 7 of 175A shall apply.

212 (q) The commissioner may promulgate rules and regulations
213 implementing the provisions of this section.

214 (r) On January 1, 2010, subsections (b) through (h) regarding
215 flex bands and such filings, other than the restriction that no vehi-
216 cle's rate for liability coverages can increase more than 15 percent
217 in any 12 month period, shall no longer be applicable.

218 Section 3. (a) No insurer or rating organization shall monopo-
219 lize or attempt to monopolize, or combine or conspire with any
220 other person or persons to monopolize, in any territory, the busi-
221 ness of insurance or any kind, subdivision or class thereof.

222 (b) No insurer or rating organization shall agree with any other
223 insurer or rating organization to charge or adhere to any rate,
224 although insurers and rating organizations may continue to
225 exchange statistical information and provided further a rating
226 organization may establish advisory manuals of classifications,
227 rules and rates, rating plans or modifications of any of the fore-
228 going in any manner not prohibited by the commissioner.

229 (c) No insurer or rating organization shall make any agreement
230 with any other insurer, rating organization or other person to
231 restrain trade.

232 (d) No insurer or rating organization shall make any agreement
233 with any other insurer, rating organization or other person the
234 effect of which may be substantially to lessen competition in any
235 territory or in any kind, subdivision or class of insurance.

236 (e) No insurer may acquire or retain any capital stock or assets
237 of, or have any common management with, any other insurer or
238 insurers, if the effect of such acquisition, retention or common
239 management may be substantially to lessen competition in any ter-
240 ritory or in any kind, subdivision or class of insurance.

241 (f) No insurer or rating organization shall make any agreement
242 with any other insurer or rating organization to refuse to deal with
243 any person in connection with the sale of insurance.

244 (g) No rating organization or member or subscriber thereof
245 shall interfere with the right of any insurer to make its rates inde-
246 pendently of such rating organization or to charge rates different
247 from the rates made by such rating organization.

248 (h) No rating organization member or subscriber shall refuse to
249 do business with, or prohibit or prevent the payment of commis-
250 sion to any licensed producer on the ground that such producer
251 does business with an insurer, which makes its rates, or any por-
252 tion thereof, independently of such rating organizations.

253 (i) Nothing contained in this chapter shall be construed as
254 requiring any insurer to become a member of or a subscriber to
255 any rating organization, or as preventing any insurer, while a
256 member of or subscriber to a rating organization, from making its
257 own rates for any kind, subdivision or class of insurance, for
258 which it does not elect to authorize the rating organization to act
259 on its behalf.

260 (j) Any insurer, which is a member of or subscriber to a rating
261 organization, may make its own rates for any kind, subdivision or
262 class of insurance. No rating organization shall have authority to
263 act on behalf of any insurer which is a member of or subscriber to
264 such rating organization except as authorized in writing by such
265 members or subscriber, which authority may be supplemented,
266 modified or revoked, in whole or in part, at any time by such
267 member or subscriber at its option.

268 (k) No rating organization shall have or adopt any rule or exe-
269 cute any agreement, or formulate or engage in any program, the
270 effect of which would be to require any member, subscriber or
271 other insurer to utilize some or all of its services, or to adhere to
272 its rates, rating plans, rating systems, underwriting rules, or policy
273 forms, or to prevent any insurer from acting independently.

274 (l) Any rate made in violation of subsections (a) through (k) of
275 this section or section 4 of this chapter shall be disapproved by the
276 commissioner pursuant to the procedures prescribed in section 7
277 of chapter 175A, and each violator shall be punished by a fine of
278 not more than \$10,000 for each offense or by imprisonment for
279 not more than 1 year, or by both; or shall be subject to a civil
280 penalty not to exceed \$1,000 for each such offense which may be
281 assessed in an action brought on behalf of the commonwealth in
282 any court of competent jurisdiction. The issuance, procurement or

283 negotiation of a single policy of insurance shall be deemed a sepa-
284 rate offense.

285 (m) The commissioner, through the attorney general, and any
286 person injured in his business or property by reason of anything
287 forbidden in aforesaid subsections may maintain an action to
288 enjoin any violation of such subsection.

289 (n) Any person injured in his business or property by reason of
290 anything forbidden in the aforesaid subsections may maintain an
291 action and shall recover threefold the damages sustained by him.

292 (o) The provisions of subsections (a) through (k) shall not be
293 construed to prohibit 2 or more insurers who by virtue of their
294 business associations in the United States represent themselves to
295 be or are customarily known as an “insurance company group”, or
296 similar insurance trade designation, from having the right to
297 exchange statistical information.

298 (p) The fact that 2 or more admitted insurers, whether or not
299 members or subscribers of a rating or advisory organization, use,
300 either consistently or intermittently, the manuals of classifications,
301 rules and rates, rating plans, modifications of any of the foregoing
302 or recommendations of such organizations, shall not be sufficient
303 in itself to support a finding that an agreement to adhere exists,
304 and may be used only for the purpose of supplementing or
305 explaining direct evidence of the existence of any such agreement.

306 Section 4. (a) No insurer or rating organization shall file in bad
307 faith rates which it knows or should know are grossly inadequate
308 for the insurance coverage provided, and which are filed and used
309 for the purpose of unfairly competing for motor vehicle insurance
310 risks.

311 (b) At any hearing conducted under this section, the burden
312 shall be on the filer to justify that such filing is not in violation of
313 this section. If, after such hearing, the commissioner finds that the
314 filer has failed to so justify such filing, he may order that all poli-
315 cies written under such bad-faith filing be rewritten at rates
316 meeting the requirements of this chapter from the date of incep-
317 tion of such policies, or that all such policies be cancelled on a pro
318 rata basis.

319 Section 5. The commissioner may once in each calendar year
320 establish rules by which the companies shall produce an informa-
321 tion guide which outlines in language prescribed or approved by

322 the commissioner the various choices of coverage available to
323 insureds and an approximation of differences in cost among var-
324 ious types of coverage and among competing carriers. Each com-
325 pany shall bear full responsibility for assuring that a copy of such
326 information guide is forwarded to every person insured or who
327 requests a quote for insurance from that company, or who solicits
328 insurance from that company's producers.

329 Section 6. Insurance companies or their producers shall dis-
330 close in simple language to every person they insure or solicit for
331 insurance that person's coverage options, including the option to
332 exclude oneself and members of one's household from personal
333 injury protection coverage, so-called. The commissioner shall pre-
334 scribe the form, content, and timing of said disclosures.

335 Section 7. (a) An insurer, or a producer, doing business in this
336 state may not require a person to use a particular insurance pre-
337 mium finance company or other installment plan for which a
338 finance charge or other fee in connection with an installment pay-
339 ment has been or will be imposed.

340 (b) An insurer, or a producer, doing business in this state may
341 not refuse to issue a policy of insurance solely because the pre-
342 miums for the policy have been advanced by a premium finance
343 company.

1 SECTION 43. Section 6D of chapter 231 of the General Laws,
2 as appearing in the 2002 Official Edition, is hereby amended by
3 striking in line 10, the word "two" and replacing it with the
4 number "4".

1 SECTION 44. Said Section 6D of chapter 231, as so appearing,
2 is hereby further amended by adding the following:—

3 For the purposes of this section an expense for health care serv-
4 ices shall not be deemed "reasonable" if it exceeds the rate of pay-
5 ment established by the division of health care finance and policy
6 pursuant to section 13 of chapter 152 as of the date of service.

7 Notwithstanding the foregoing provisions of this section, a
8 plaintiff may not recover damages in a tort action for pain and suf-
9 fering where more than fifty percent of the economic damages
10 claimed result from acupuncture, chiropractic or physical therapy
11 services unless a the services have been found to be "reasonable

12 and necessary” by an independent medical examination of the
13 plaintiff. The examination will be conducted by a medical profes-
14 sional selected by the insurance company. The requirement for an
15 independent medical examination in such cases may be waived by
16 the insurer in writing.

1 SECTION 45. The commissioner, in consultation with the
2 director of the office of consumer affairs and business regulation,
3 shall develop and publish by January 1, 2006 both in hardcopy and
4 on the Division of Insurance’s website a “Consumer Bill of Rights
5 for Automobile Insurance,” pamphlet setting forth a summary of
6 consumers’ rights and responsibilities with respect to such poli-
7 cies.

1 SECTION 46. Section 4 shall take effect on December 31,
2 2010.

1 SECTION 47. Except as otherwise specified, this act shall take
2 effect upon passage.